But the section does not merely require that the book should contain the information. It must clearly state in plain words the items and transactions.

The Official Assignee argued that "transaction" means the whole contract. I am not satisfied that this is so. There are other provisions for a record of the whole contract. I hardly think that the Legislature intends the memorandum, when one is given, to be transcribed into the cash book or any other book of account, nor do I think it necessary to copy a promissory note to which section 4(4) applies into a book of account.

Many things can be expressed in different ways, some people preferring one way and some another, but I think it reasonably plain from the two entries in the day book that Tay Kim Soon and Lee Hock Lock became debtors in specified sums in respect of a demand note in one case and in respect of a cheque given to be cashed at a further date in the other case. If the money was not advanced they would not be debtors as they are shown to be.

For these reasons I am of opinion that the day book shews sufficiently plainly:—

1. That on 5th November 1936 a sum of $5,000 was lent to Tay Kim Soon and Lee Hock Lock on a demand promissory note; and,
2. That on the 28th December 1936 $2,000 was paid to the same two persons in respect of a cheque for $2,020 which was not to be cashed until the 17th of January 1937.

It is admitted that these advances were actually made, so the entries are correct and conform to the requirements of section 6.

I therefore allow the two proofs.

Appeal allowed.

Solicitors for the appellant—*Chan & Eber.*

[APPELLATE CRIMINAL JURISDICTION]

McELWAINE, C. J.

January 25, 1938.

M. SATHAIAH son of MUTHIAIAH PILLAY & 3 ors. .....Appellants.

vs.

REX .....Respondent.

[MAGISTRATE'S APPEALS Nos. 93, 98, 99 & 100 of 1937]

Criminal law — cheating — charge — particulars of—common intention—Penal Code, S. 34.

Per McElwaine, C.J.—

A charge, and especially a charge in a complicated case, should be accompanied by particulars of the acts complained of as constituting the crime charged when the mere mention of the time, place persons and crime are insufficient to explain by what means the crime was committed. This is particularly necessary in charges of such offences as cheating. The particulars need not be incorporated in the charge. It is sufficient if they are contained in a separate memorandum supplied to the accused and to the Court.

When Section 34 of the Penal Code is relied upon, the substance of the section should be indicated in the particulars or at least explained to the accused at the commencement of the trial if the accused are not represented by counsel.

MAGISTRATE'S APPEALS.

Tampoe-Phillips for the Appellants.

Storr, Crown Counsel, for the Respondent.

Cur. Ad. Vult.

McELWAINE, C. J.—The four accused were tried by the District Judge, Singapore, on three charges of cheating.

The first charge read as follows:—

> That you on or about the 1st day of July 1937 at Singapore, cheated Harry Bowrey and Leonard Richards, trading under the Firm name of Bowrey, Richards & Co., by dishonestly inducing them to deliver bags of rice valued at $2,300 to you which were the property of the said firm of Bowrey, Richards & Co. and thereby committed an offence punishable under section 420 of the Penal Code (Chapter 20).

The other two charges were identical save that the dates of the alleged offences were 13th July and 19th July respectively and the value of the rice was different.

No particulars of the dishonest inducement are given in the charge, nor were particulars asked for or given.

The case was, as the District Judge says, a complicated case. The trial occupied ten days. In his grounds of Judgment the learned District Judge asks "what are the misrepresentations which caused Bowrey & Richards to sell this rice? First of all I suppose the allegation by the second accused that Vel owned Jalan Sultan."

A case should be so presented that it should not be necessary to "suppose."

At the trial counsel for No. 4 accused in applying for his discharge dealt with the question of Jalan Sultan and nothing else, which indicates that he too supposed that the misrepresentation alleged related to Jalan Sultan. It does not seem to have occurred to him that other misrepresentations possibly lurked in the evidence and there is no reason to suppose that the then undefended prisoners were any better aware of the case they had to meet.

Perhaps due to this lack of particularity there is in the evidence that vagueness about dates referred to by the District Judge.

A very large proportion of the evidence went to shew that the four accused, even if they were not partners in the strict sense, were nevertheless so concerned in the business of Vel & Company that they had a common intention to get rice from Bowrey & Richards on credit. There is ample evidence of this.

But because people have a common intention to carry on a business it does not necessarily follow that they have a common intention to promote their business by criminal means.

Before section 34 of the Penal Code (Chapter 20) can be applied to any one of the four it must be shewn that he had a criminal intent, in this case that he did something to deceive Bowrey & Richards into believing that the Jalan Sultan property belonged to Vel & Company or to one of the accused.

If it is shewn that he did anything with a guilty mind to deceive Bowrey & Richards as to Jalan Sultan then he will be liable for whatever any of the other three did to practise the same deception.

Jalan Sultan was first mentioned to Bowrey & Richards on the 28th or 29th of June. Certainly on 29th June Bowrey went with No. 2 accused to see the property. On that date Bowrey swears that he asked No. 2 through Tissera "Is this (meaning the Jalan Sultan house property) the property of Vel & Co.?" to which No. 2 is alleged to have answered "Yes." Tissera apparently was the interpreter, and though he was called as a Crown witness and gave evidence at great length he was not asked a single question about this important conversation in which he presumably interpreted between Bowrey and No. 2 accused when the statement which the District Judge supposes was the misrepresentation is alleged to have been made. There is no suggestion that No. 4 accused was present on this expedition to Jalan Sultan on 29th June and Mr. Tampoe Phillips argued strenuously that there was no evidence connecting No. 4 with this misrepresentation which led to the supply by Bowrey & Richards on 1st July of $2,300 worth of rice.

I do not understand the District Judge to have found as a fact that No. 4 accused was present at any meeting with Bowrey & Richards prior to 1st July at which Jalan Sultan was mentioned, or, on the other hand, that he disbelieved Richards; but in my opinion there was ample evidence to support a finding that on 29th June, if not earlier, Nos. 1, 2 and 4 accused agreed to put up security in Jalan Sultan "which they said was theirs by which we assumed they meant No. 1." This was in the evidence of Mr. Richards who proceeded "No. 2 took Bowrey to see it in their car." In cross-examination Richards said "I first saw you when you came to see us about Siong Lim Park. I did not know you then." A little later in his evidence he says "you (No. 4 accused) came with No. 2 accused and asked Bowrey and me for advice as to raising mortgage on Siong Lim Park." I do not understand from this evidence that the question of the mortgage was discussed on the day Richards first saw No. 4 accused. Mr. Tampoe Phillips has shewn from the evidence that the Park was valued on 12th July and that a couple of days after, the middle of July, Nos. 2 and 4 accused interviewed the Bank about an advance to enable them to buy the Park. I cannot infer from this that the first mention of the Park was in July and that therefore Richards did not see No. 4 accused until after the date in the first charge. Richards says that after they got the Bank's letter of 15th June warning them to do business with accused "on a secured basis" they sent for the firm and all four accused came to the office. This indicates that Richards met No. 4 accused in June before the alleged false pretence. Bowrey says that No. 4 accused "came to see me about Siong Lim Park property often in June-July—middle of August." In addition to all this Richards said that the $2,300 worth of rice (which was supplied on 1st July) was sold by him on the representation as to Jalan Sultan. Bowrey expressly says "No. 4 accused first came to me in first half of June." I think therfore there was plenty of evidence that Richards and No. 4 accused were in contact at least as early as 29th June and the conference between Bowrey & Richards on the one hand and Nos. 1, 2 and 4 accused on the other, when the accused said that Jalan Sultan was theirs, actually took place and that it took place shortly before Bowrey went with No. 2 accused to see Jalan Sultan, probably on the same day. Mr. Tampoe Phillips has pointed out that Bowrey makes no mention of this interview with Nos. 1, 2 and 4 accused. It is true he makes no specific mention of it, but he swore that from 29th June to 13th August he had been led to believe by Nos. 1, 2 and 4 accused that the property belonged to Vel & Company, and it is obvious that there was talk of Jalan Sultan before Bowrey went there with No. 2 accused. I have no doubt that Richards is correct when he says that Bowrey and he had a conference with Nos. 1, 2 and 4 accused before Bowrey went to see the property.

Now about this very time—the end of June these three accused got credit from Irving Jones & Co. by No. 1 in the presence of Nos. 2 and 4 accused, representing to Mr. Jones that he had house property near Jalan Sultan.

I have been somewhat troubled by the fact that an interpreter was used at Jalan Sultan but neither No. 1 nor No. 2 accused alleged that anything was said which they could not understand. They both spoke English though Bowrey says then No. 4 accused, when he came with Nos. 1 and 2 accused, did not interpret except when they discussed rice and properties. No. 1 accused in his unsworn statement gives an account of conversations with Bowrey in which he makes no reference to an interpreter. Some of the letters exhibited were written in English to Nos. 1 and 2 accused by Grace on 11th June. No. 2 accused writes a sharp note in English to Grace in reply to a request for $10.

I think these people knew quite enough English to know the differences between "I own property at Jalan Sultan" and "I am going to buy property at Jalan Sultan."

I now turn to the documents in the case.

On 30th June No. 3 accused on behalf of Vel & Co. wrote to Bowrey & Richards "we are now pleased to furnish you with further security to protect all your drafts on us." He then gives some particulars of Jalan Sultan and ends "The relative grant is being sent to our lawyer Mr. Mitter for his attention."

On 9th July No. 1 accused executed an agreement to purchase the Jalan Sultan property for $8,000 and paid down $800 derived, apparently, from the sale of some of Bowrey & Richards rice. How long before 9th July negotiations for this purchase had been going on we are not told.

On 13th July Bowrey & Richards wrote to Vel & Co. "We shall eventually require the title deeds of the Jalan Sultan property. Expedite the delivery of the title deed of the Jalan Sultan property." To this No. 3 accused replied "the title deeds will come into your possession in a week's time, (Jalan Sultan property)."

Bowrey said they were produced to him before 13th July when, if he had looked at them, he would have seen that Tan Jin Chwee was the owner. Why did Bowrey write for title deeds which he had just seen? Was he referring to the mortgage or to a title deed shewing Vel & Company to be the owner? Whatever his belief on 1st July may have been as to the ownership of Jalan Sultan Bowrey & Richards had received before the 13th a letter dated 7th July from Mr. Mitter "As regards Jalan Sultan the title deeds have not yet been delivered to me by the vendor and I will let you have inspection as soon as I get the said deeds." This letter was a clear indication that Vel & Co. did not own Jalan Sultan but were only purchasing it.

But the District Judge finds that Bowrey did not so understand it.

On August 6th Bowrey & Richards wrote pressing for payment and while they refer to the Paya Lebar land security (which I shall mention later) they are silent as to Jalan Sultan though Bowrey said it was not until 13th August when he received a 'phone call from Messrs. Sisson & Delay that he learned that Jalan Sultan did not belong to Vel & Company. On this very day, 13th August, Vel & Company wrote "Jalan Sultan title deeds to be completed and handed over to your goodselves before the end of the month." On the 9th August the time for completion of the purchase had been extended to 9th September. The letter of 13th was in all probability written by No. 3 accused. These three letters of 30th June, 14th July and 13th August form the only evidence connecting No. 3 accused with Jalan Sultan and they are not sufficient to prove beyond reasonable doubt that No. 3 accused knew of and implemented the deception. They were written under instructions. He may not have known that No. 1 accused did not own the land or he may have thought that it was about to be acquired. At any rate he was not present when any representations as to it were made, and his guilt is left in some doubt.

I therefore allowed No. 3 accused's appeal and quashed his conviction on 22nd January 1938 when the accused were present on the re-argument of a point in No. 4 accused's appeal.

I am of opinion that there was evidence to support the District Judge's finding that a false representation that No. 1 accused owned part of Jalan Sultan was made by or on behalf of Nos. 1, 2 and 4 accused, all three being present, before the supply of the $2,300 worth of rice on 1st July. Bowrey & Richards say that they were deceived, and that they believed Vel & Company owned Jalan Sultan and were "quite well to do."

In June Bowrey & Richards took a wise step: they applied to their Bank for a Report on Vel & Company. On 15th June the Bank reported:

> "We are informed that the above (i.e. Vel & Company) are importers of Rangoon rice and estate suppliers. The sole proprietor, Moona Sathaiah (No. 1 accused) is reported to be respectable but to be possessed of only small means. We have been advised that business should be done on a secured basis."

After this letter Bowrey & Richards started to look for security and their first efforts to get it should have shewn any reasonable person the kind of people with whom they were dealing. They brought the title of a piece of land at Paya Lebar dated 23rd June 1937 shewing one Vellasamy to have purchased it for $810. Bowrey & Richards were not satisfied as the title was not in the name of Vel & Company or of any of the accused and also they wanted $5,000 security. A few days later Nos 2 and 4 accused brought a conveyance of the same land, this time in the name of No. 1 accused, shewing the purchase price to be $5,091.35. When this remarkable increase was noticed No. 4 accused smiled and said "that has all been arranged with the land office." A palpable fraud. Again, in June No. 4 accused came to Richards and told him that the only honest man in the bunch were himself (No. 4 accused) and No. 1 accused, a clear intimation that Nos. 2 and 3 accused were dishonest. The Paya Lebar transaction shewed up the character of No. 4 accused, leaving No. 1 accused the sole "honest" man in the "bunch."

The fraudulently valued Paya Lebar land not being satisfactory Bowrey & Richards are willing to accept the representation of Nos. 1, 2 and 4

accused that No. 1 accused owned Jalan Sultan.

With this knowledge they sold on 1st July, $2,300 worth of rice on credit "on the strength of the representation as to Jalan Sultan property." The second sale on credit was on 13th July, after they had received Mr. Mitter's letter quoted above and after they had had the title deeds of Jalan Sultan in their hands.

On the 14th July a bill for $1,218 became due but this "well to do" firm was unable to meet it, but "on 19th July they delivered a further $682.24 worth of rice on credit. But the learned District Judge took these points (which relate more to the second and third charges than to the first), into consideration and came to the conclusion that Bowrey & Richards were complacent and credulous and were deceived.

It is refreshing to find in this sceptical age men of business with such simple childlike faith in their fellow men that after the warnings I have indicated they should still repose in the accused such implicit trust.

The learned District Judge as I have said, did not overlook these warnings: he found that Bowrey & Richards continued to be deceived by the representations of 29th June until after the 19th July.

At any rate there is no doubt that Bowrey & Richards did in fact supply rice on credit on 13th and 19th July. The District Judge has made his findings of fact after a very careful examination of the evidence and I am not satisfied that he was wrong in the conclusions at which he arrived when he convicted Nos. 1, 2 and 4 accused.

I have already allowed No. 3 accused's appeal. I dismiss the appeals of Nos. 1, 2 and 4 accused. I see no sufficient reason to interfere with the sentences.

I would add a word about the charges in this case. A charge, and especially a charge in a complicated case, should be accompanied by particulars of the acts complained of as constituting the crime charged when the mere mention of the time, place, persons and crime are insufficient to explain by what means the crime was committed. This is particularly necessary in charges of such offences as cheating.

The particulars need not be incorporated in the charge. It is sufficient if they are contained in a separate memorandum supplied to the accused and to the Court.

Such a course helps the prosecutor by providing a simple list of the main points which he must prove; it helps the accused by letting him know exactly what he is alleged to have done that was wrong; it helps the Court by giving it a proper outline of the case which enables it to appreciate the significance and bearing of any piece of evidence as it is given.

The present case seems to have been thrown at the District Judge in such a way that at the end he is left to suppose what act it was that constituted the crime.

As I have said, the false representation as to Jalan Sultan was sufficiently clearly emphasised in the evidence of the third witness Richards to shew that that was the focal point in the case but evidence was given of other statements said to have been made by the accused, statements which may have been mere puffing which might lead to confusion as to what was the real offence.

I think too, that when section 34 of the Penal Code is relied upon, the substance of the section should be indicated in the particulars or at least explained to the accused at the commencement of the trial if the accused are not represented by counsel.

Appeal of Accused No. 3 allowed; Appeals of Accused Nos. 1, 2 & 4 dismissed.

[ORIGINAL CIVIL JURISDICTION]

DEANE, J.

October 19, 1935.

IN RE YEO HOCK HOE'S POLICY.

[SINGAPORE ORIGINATING SUMMONS No. 104 of 1925]

Ordinance No. 36 (Conveyancing and Law of Property), s. 72, sub-s. 5,—Moneys payable under an endowment policy of assurance—Assured's right to benefit—Insolvency—Appointment of Trustee.

The assured effected an endowment policy of assurance on his life expressed to be for the benefit of his wife, the applicant, but he reserved to himself "the right without the consent of the beneficiary to revoke the appointment of such beneficiary and substitute my own or any other name therefor, and also without such consent to receive every benefit, exercise every right and enjoy every privilege conferred upon the insured by such Policy." The assured died insolvent, for which reason the widow did not apply for letters of administration: and as the Insurance company would only pay the policy monies to a legal personal representative she took out an application for an order for payment of the policy moneys to her nominee.

Held, the assured had not made a complete and absolute gift to his wife since he never parted with the right to dispose of the policy monies, and as he died possessed of such right it must pass to his personal representatives for the benefit of the creditors.

SUMMONS.

Wee Swee Teow for applicant, Khoo Kwak Neo.

The facts and arguments appear sufficiently from the judgment.

Cur. Ad. Vult.

DEANE, J.—This is an application by originating summons for an order that Yeo Yan Boon of Nos. 1/3 Raffles Chambers, Singapore may be appointed as trustee of the money due and payable to the applicant by the Great Eastern Life Assurance Company Limited under Policy